

PART VIII.—RESERVED AND PROTECTED FORESTS.

1. The Governor General in Council has noticed with pleasure the gradual conversion into reserves of such protected forests as it is not considered necessary to disforest. The constitution of protected forests was eminently useful at the outset of a separate Forest Administration, in order to provide at once for a limited protection of Government forest lands until a decision could be arrived at as to what areas should be maintained permanently as forests. But it now seems evident that there is no practical necessity for the creation of two classes of demarcated State forests, having regard to the complete and searching character of the enquiry and settlement made under the direction of the Bombay Government. (G. I., H. D., No. 462-F., dated 3rd June 1886; *vide* G. R. No. 4747, dated 3rd July 1886.)

2. Whilst it is conceivable that circumstances may exist under which, as a transitory measure, it might be preferable to declare forests to be protected, their constitution as reserved forests must be the aim of administration. (G. I., R. & A., No. 816-F., dated 5th August 1889; *vide* G. R. No. 6731, dated 9th September 1889.)

3. A proclamation by the Forest Settlement Officer is clearly necessary under Section 6 of the Indian Forest Act, 1878, for lands proposed to be constituted reserved forests under Section 4 of the Act. The proclamation should be as simple as possible and follow the order of the heads (a), (b), (c). Under (a)* the whole extent of the reserve should be indicated in general terms, and afterwards the particular numbers taken up in each village should be specified in the proclamation for that village. Under (b) the consequences appear to be those set forth in Sections 22, 23 and 25. (G. R. No. 4310, dated 18th August 1879.)

4. An occupied number cannot be considered to be forest land or waste land, and it cannot be argued that an occupied number can under Section 3 of the Act be declared a reserved forest simply because a few teak trees may be growing on it. (G. R. No. 3991, dated 31st July 1880.)

5. It is quite clear that Chapter II of the Forest Act relates to forest land, or waste land described in Section 3 and to no other land.

Section 3 specifies what land it shall be lawful for the Government to constitute reserved forest, namely, forest and waste land belonging to Government. The words "any land" in Section 4 cannot include any other land than what it is lawful for the Government to constitute a reserved forest. The Government cannot notify cultivated lands, whether alienated or unalienated, as forest reserves,

* Under clause (a) of Section 6 as altered by Act X of 1890 the proclamation should specify as nearly as possible the situation and limits of the proposed forest.

except by first-acquiring all the rights of ownership and converting them into waste lands. The object of Section 10 is to meet the case of any claim that may possibly be made of private ownership in or over such forest land or waste land or any portion thereof as is notified under Section 4, and to empower the Forest Settlement Officer to exclude such land from the proposed forest or obtain a surrender of it from the claimant or acquire it under the Land Acquisition Act, 1870.

With regard to any land other than forest land or waste land belonging to Government, if required for the purposes of the Forest Act, 1878, Section 83 provides that it can be treated as acquired for a public purpose and dealt with under the Land Acquisition Act, 1870. When such land has been so acquired, it becomes with all rights in or over the same public property, subject always to the right of way and all other rights of the public or of individuals legally subsisting. If Government does not dispose of it in any other way or for any other purpose, it becomes waste land belonging to Government, and may be constituted a reserved forest in the manner provided in Chapter II of the Forest Act. (L. R., No. 565, dated 9th May 1881; *vide* G. R. No. 3112, dated 31st idem.)

6. The land which Section 3 of the Forest Act (VII of 1878) empowers Government to constitute a 'reserved forest' is precisely the same as the land which under Section 28 of the Act may be constituted a 'protected forest,' *viz.*, 'forest land or waste land which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest produce of which the Government is entitled.'

'Land 'which has been given out for cultivation' is certainly not 'waste land.' 'Forest land' is not defined in the Act, and it is a term not easy of definition, but land which has been given out for agricultural purposes on the ordinary survey tenure, or land which the holder thereof has in any way acquired a right to hold for such purposes on such a tenure, cannot properly be called, 'forest land,' even though it was forest land before it was so given out, and even though Government have reserved their right to the trees, or to some of the trees growing therein.

But where land which was originally waste, and more or less overgrown with forest trees and jungle, has been given out merely for grazing or for dahi-cultivation under conditions restraining the cutting of the forest trees, such land is still forest land and may be dealt with by Government under either Section 3 or Section 28 of the Act. But care would have to be taken not to include any such land as that described above in the preceding paragraph.

(L. R. No. 80, dated 15th January 1883; *vide* G. R. No. 904 dated 2nd February 1883.)

The term 'forest or waste land' in Section 35 of the Indian Forest Act, 1878, must be interpreted in the same manner as the term in other parts of the Act. The opinion given above as to the meaning of the terms 'forest land' and 'waste land' in Sections 3 and 28 is therefore equally applicable to the same terms in Section 35. (L. R. No. 701, dated 23rd May 1883; *vide* G. R. No. 4749, dated 20th June 1883.)

7. Government are not prepared to adopt the view that any land designated as *gairán* cannot be converted into forest. (G. R. No. 6046, dated 25th August 1890.)

8. The provisions of Chapter IV of the Forest Act are applicable to any forest land not included in a reserved forest which is the property of Government. A decision of a District Court declaring certain land to belong to Government cannot be taken as sufficient to satisfy the requirements of the third paragraph of Section 28. Nor can the axiom of law, *nullum tempus occurrit domino regi* restrict an express enactment. (L. R. No. 1306, dated 20th October 1880; *vide* G. R. No. 5962, dated 11th November 1880.)

9. It is to be observed that the Forest Act does not apparently contemplate the issue of any notification stating that it is proposed to constitute certain lands protected forests. Section 28 of the Act authorizes Government to declare by notification that the provisions of Chapter IV relating to protected forests are applicable to certain descriptions of forest land or waste land, and that the lands comprised in such notification shall be called protected forests. It does not, however, provide for the publication of a notification declaring merely that it is proposed to constitute certain lands protected forests. (G. R. No. 538, dated 26th January 1881.)

10. As regards the agency by which beta lands included in protected forests should be managed, it seems obviously expedient that these lands should be retained under the control and management of the Forest Department.

The subordinate local officers of the Land, Revenue and Police Departments should fully co-operate with those of the Forest Department in securing the due observance of the rules regarding beta lands.

(G. R. No. 5652, dated 13th August 1890.)

11. As regards the question whether notifications reserving trees and prohibiting the quarrying of stone, burning of lime or charcoal, &c., can legally issue under Section 29 of the Forest Act VII of 1878, in respect of forest or waste lands before the nature and extent of the rights of Government and private persons in those lands have been inquired into and recorded, it must be remembered that Section 28 of the Forest Act requires that unless such rights have been inquired into and recorded

(a) at a survey or settlement, or,

(b) in such other manner as Government thinks sufficient,
no notification shall issue under that section except for the purpose of preventing the actual rights of Government from being endangered, pending enquiry, in which case the notification leaves existing rights unaffected.

The last paragraph of Section 28 contemplates that the notification in cases where the rights of Government are endangered, should be issued only when there is an enquiry *actually pending*. The notification is to be "*pending enquiry and record*," and it was clearly not intended that the enquiry should be indefinitely postponed after issue of the notification.

Where an enquiry has been instituted and is still pending, a notification under Section 28, final paragraph, can issue only if the enquiry is likely to last so long that the rights of Government may be endangered, but the result of that notification is to leave actual rights, then existing, wholly unaffected. But such a notification would be of no avail whatever, unless it operated under Section 32 to protect by penalties the rights of Government then actually existing. Section 29, therefore, gives power to Government to declare that the infringement of certain of its rights, then actually existing, shall thereafter entail a liability to the penalties provided by Section 32. But under the final paragraph of Section 28 such declaration cannot abridge or affect any rights in existence and, therefore, in each prosecution under Section 32 the question will be, not only whether Government have notified a reservation or prohibition, but whether such reservation or prohibition in any way affects or abridges pre-existing rights. Until the rights have been enquired into and recorded, it is almost impossible to say what act or order may not abridge or affect them, and if a Forest Officer prosecutes a private person and such person asserts that the act complained of was done in the exercise of a right which he claims, but which has not been enquired into, settled and recorded, it is hardly to be expected that the Criminal Courts will convict.

There would thus be a great practical difficulty in enforcing the penal provisions of Section 32 in respect of any notified forest prior to enquiry into existing rights, for every prosecution would involve an enquiry into those rights, and unless it could be shown affirmatively that the reservations and prohibitions did not in any way affect or abridge existing rights, the prosecution would fail. (L. R. No. 269, dated 3rd March 1890; *vide* G. R. No. 2058, dated 19th idem.)

12. The argument in the Legal Remembrancer's report No. 269, dated 3rd March 1890, given above applies equally to a declaration by Government under clause (b) of Section 29 of the Forest Act as to a declaration under clause (a) or clause (c) of that

section. (L. R. No. 1068, dated 23rd July 1890; *vide* G. R. No. 5645, dated 13th August 1890.)

13. Notifications under Sections 19, 28 and 29(b) of the Indian Forest Act should be in the forms given below:—

In exercise of the power conferred by Section 19 of the Indian Forest Act, 1878, the Governor in Council is pleased, with reference to Notification * No. , dated the , published at page of the *Bombay Government Gazette* of the , to declare the land comprised within Survey Nos. , in the village of in the Taluka of the District to be a reserved forest from the of 188 .

By order, &c.,

Secretary to Government.

In exercise of the power conferred by Section 28 of the Indian Forest Act, 1878, the Governor in Council is pleased to declare the land comprised within the Survey Nos. or portions of Survey Nos. hereinbelow mentioned in the village of in the Taluka of the District to be a protected forest.

Survey Nos. above referred to.

By order, &c.,

Secretary to Government.

In exercise of the power conferred by Section 29 (b) of the Indian Forest Act, 1878, the Governor in Council is pleased to declare that the portion of the protected forest of the Taluka of the District, comprised within Survey Nos. of the village of be closed for a term of years from the date of this notification, and that the rights of private persons (if any) over such portion shall be suspended during the said term.

By order, &c.,

Secretary to Government.

(G. R. No. 673, dated 1st February 1881.)

14. In all draft notifications relating to forests submitted to Government the correct names of the villages should be entered in the Devanagari character below the English spelling. (G. M. No. 83, dated 6th January 1883.)

* Preliminary Notification issued under Section 4 of the Act
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15. As regards the question whether a notification under Section 4 of the Forest Act, 1878, satisfies the requirements of that section in describing the lands to be constituted reserved forest by the numbers which they formerly bore, but which, as the survey has been revised, they no longer bear, it is to be observed that Section 4 (b) of Act VII of 1878 as amended by Act V of 1890 requires a notification "*specifying as nearly as possible the situation and limits of such land*", and the limits will be sufficiently described under explanation 1 to that section by boundaries that are well known and readily intelligible. The Act does not require the survey numbers to be specified at all. That is probably the most convenient mode of description in this Presidency, but there is no necessity for citing the numbers so long as the limits of the land are indicated in a way that the public can recognize.

The notification under Section 19 is intended to be more precise as a final record of rights. This is indicated by the words "definitely according to boundary-marks erected or otherwise" in the last sentence but one of that section. It is not necessary, before issuing a notification under Section 4, to wait till the materials necessary for one under Section 19 are ready. (L. R. No. 498, dated 3rd May 1890; *vide* G. R. No. 3297, dated 12th idem.)

(2) The not uncommon entry "Part of survey number" in schedules to notifications under the Indian Forest Act does not convey to intending claimants sufficiently accurate information as to the situation and limits of the land notified. It is there-

A demarcated plot in the north-west corner of the survey number; plan open to inspection in the office of the Forest Settlement Officer.

fore directed that such parts of survey numbers should in future be described in more detail by a remark of the kind noted in the margin, care being taken to demarcate the land and plot it on the Forest Settlement Officer's map before the notification is submitted. In the case of a whole survey number its situation and limits are sufficiently described by the survey number itself without further description.

(G. R. No. 8439, dated 19th November 1897.)

16. Cases arise in which it may be desirable to publish, by means of a fresh notification, amended descriptions of the boundaries of forest reserves already notified under Section 19 of the Indian Forest Act or under other forest enactments. It has been ascertained that there is no legal objection to this course, if the fresh notification merely provides for the substitution of a more exact and definite description of the boundaries for that which was originally notified, and which, though purporting to describe the boundaries as they existed at the time, has subsequently become incorrect, or proved to be open to misconstruction. The appended form of notification is considered suitable for such cases, and may be employed whenever necessary.

The procedure permitted in the foregoing paragraph must not be held to extend to any such alteration of the boundaries on the ground as would involve either the inclusion of new areas or the exclusion of any lands which have been declared by the previous notification to be reserved forest. Such changes require either a new settlement of the additions it is proposed to make, or, in the case of disforestation, the previous sanction of the Government of India:—

Notification.

With reference to Notification No. _____, dated _____, published, under Section _____ of the Indian Forest Act (VII of 1878), at page _____ of the *Government Gazette* of the _____, declaring the _____ forest to be a reserved forest, _____ is pleased to direct that the following amended and more accurate description of the boundaries of the said forest be substituted for the description contained in the said notification:—

(G. I., R. & A., No. 10-F., dated 20th June 1893; *vide* G. R. No. 5338, dated 25th July 1893.)

17. The sanction of the Government of India is not required to the exclusion from forests of lands which were merely notified under Section 4 of the Indian Forest Act, 1878, nor is it necessary for Government to publish any formal notification directing their disforestation. (G. R. No. 6028, dated 25th July 1885.)

18. When the Civil and Forest authorities are not unanimous as to the proposed disforestation of any particular lands, the Government of India should be supplied with a full statement of the arguments urged by the respective authorities for and against such disforestation. (G. I., H. D., No. 172-F., dated 27th February 1886; *vide* G. R. No. 1898, dated 10th March 1886.)

19. The Government of India is not disposed to admit the argument that reserved forest land should be given up merely because it is barren. As a general rule, land which is 'poor,' 'worthless' (for other purposes), &c., should be kept under such forest growth as it is capable of producing. (G. I., R. & A., No. 966-F., dated 13th October 1887; *vide* G. R. No. 7640, dated 9th November 1887.)

20. As there is a great difference between (I) forests reserved after investigation and settlement under Chapter II of the Forest Act, and (II) forests declared to be reserved under Section 34 subject to subsequent adjustment after investigation, in all cases of proposed 'exclusion from reserved forests' it should be stated whether the disforestation for which sanction is asked concerns forest of the first or second class. (G. I., R. & A., No. 793-F., dated 27th July 1888, *vide* G. R. No. 5312, dated 7th August 1888.)

21. A draft notification in the form appended below should, subject to such minor modifications as local circumstances may render expedient or necessary, accompany every application for sanction to disforest land under Section 26 of the Indian Forest Act, 1878. In all such applications it should be stated whether or not the local Revenue and Forest authorities agree to the disforestation proposed: and that, in the event of any objection to such disforestation being urged, its nature should be recorded for the information of the Government of India.

Unless the description given in the draft notification of the boundaries of the area concerned, is sufficiently detailed and precise, the Government of India will be constrained to return, for rectification, any application which does not fulfil this condition :—

Draft Notification.

His Excellency the Governor in Council,
The Lieutenant-Governor, with the previous
The Chief Commissioner,
 sanction of the Governor General in Council, is hereby pleased to declare, under the provisions of Section of , that the area specified below, which, in Notification No. , dated the , was declared to be reserved forest under Section of that , shall cease to be reserved forest with effect from the :—

Specification of land disforested.

Name of Reserve or portion of Reserve disforested.	District.	Pargana.	Mauze.	Area in acres.

Boundaries.

Brief description.

Reasons for disforestation.

(G. I. R. & A., Nos. 6-F., dated 10th March 1892, and 12-F., dated 28th June 1893; *vide* G. Rs. Nos. 3329, dated 11th April 1892, and 5314, dated 22nd July 1893.)

22. In cases of importance, a map illustrating the proposals for disforestment of lands under Section 26 of the Indian Forest Act should accompany the papers. (G. R. No. 3329, dated 11th April 1892.)